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Supreme Court of the United States

October Term, 1958

No. 741

UNION TRANSFER COMPANY, DBA UNION FREIGHTWAYS, ET. AL.,
Petitioners

vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Supreme Court of the United States

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UNION TRANSFER COMPANY, DBA UNION FREIGHTWAYS, ET. AL.,

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vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Union Transfer Company, d b a Union Freightways, et al., respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled case on December 3, 1958. Said judgment dismissed petitioners' petition to the United States Court of Claims upon defendant's motion for summary judgment.

A. OPINION BELOW

The opinion delivered by the United States Court of Claims, to which certiorari is sought, is reported at 168 Fed. Supp. —— and is appended hereto as Appendix A, pp. 20 to 23.

B. STATEMENT OF GROUNDS ON WHICH THIS COURT'S JURISDICTION IS INVOKED

I. The judgment of the United States Court of Claims sought to be reviewed is dated December 3, 1958, and was entered on that date.

II. Jurisdiction to review the judgment by writ of certiorari is conferred on this Court by § 1255(1) of the Judicial Code, 28 U. S. C. A. § 1255(1).

C. QUESTION PRESENTED

Are motor vehicle tariffs prescribed by the State of Nebraska for regulation of motor carriers engaged in intrastate trucking unconstitutional per se, insofar as they apply to carriers transporting property for the Federal Government, under the decision of this court in *Public Utilities Commission of California v. United States*, 355 U. S. 534, 78 S. Ct. 446, 2 L. Ed. 2d 470 (1958)? (The case last cited will at times hereafter be referred to as "the California case.")

D. CONSTITUTIONAL PROVISIONS, STATUTES AND STATE RULES AND REGULATIONS INVOLVED

I. The Constitutional provision involved is the supremacy clause of the Constitution of the United States (Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary Notwithstanding."

II. Constitution of the State of Nebraska, Art. IV, Sec. 20:

> "There shall be a State Railway Commission, * * *. The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and duties enumerated in this provision."

III. The statutes involved are Sections 75-201, 75-208, 75-209, 75-222, 75-241, 75-242, 75-245, 75-246, Nebraska Revised Statutes (Reissue 1958). These sections are set out in Appendix B, pp. 24-27.

IV. The tariff, rules and regulations involved are contained in the Nebraska Official Motor Vehicle Tariff No. 3 of the State Railway Commission. Said tariff was issued on May 22, 1945, became effective August 15, 1945, and was in full force and effect at all times involved in petitioners'

petition filed with the United States Court of Claims. Said official Motor Vehicle Tariff No. 3 provides:

> "rates and regulations contained in this tariff are the only rates, rules and regulations that lawfully may be charged for transportation of property by motor vehicle between any two points within the State of Nebraska."

V. The state order involved is an official order of the State Railway Commission of the State of Nebraska entered on February 1, 1955 directing plaintiff and other carriers operating under the jurisdiction of the State Railway Commission transporting explosives for and on behalf of the Federal Government and its various agencies to immediately proceed to collect any and all existing undercharges caused by the application of classification of tariff provisions contrary to classification and tariff provisions prescribed by the said commission. A copy of the said order is attached hereto and made a part hereof as Appendix C, pp. 28-29.

E. STATEMENT OF THE CASE

Petitioners brought this suit to comply with an order of the Nebraska State Railway Commission requiring petitioners to collect certain undercharges arising by virtue of the petitioners transporting explosives for the Federal Government for a lesser rate than that which was prescribed by the laws of Nebraska and the tariffs and regulations of the State Railway Commission of Nebraska.

Four of the petitioners are Nebraska corporations. The fifth, John E. Neylon, is an individual doing business under a trade name. All are in the trucking business and hold certificates of public convenience and necessity issued by the Nebraska State Railway Commission authorizing them to transport intrastate freight over the highways of Nebraska as common carriers.

The petitioners transported numerous shipments for the Government without filing with the State Railway Commission quotations of rates at which they would transport the shipments in question. All of the transportation was entirely within the State of Nebraska.

The Nebraska Railway Commission had issued its Official Motor Vehicle Tariff No. 3, on May 22, 1945 to be effective August 15, 1945. Tariff No. 3 provided that the rates prescribed in it were the only lawful rates that could be harged. It prescribed classification ratings, class and commodity rates and rules and regulations to be used in determining charges to be made for trucking freight in Nebraska. The amounts charged the Government by petitioners were much smaller than the amounts which were prescribed by the Commission's Tariff.

The Nebraska State Railway Commission ordered on February 1, 1955 that the petitioners and other carriers transporting explosives for the Federal Government to collect any and all existing undercharges which had occurred subsequent to January 1, 1942, in connection with such transportation.

The petitioners filed claims with the United States General Accounting Office for these undercharges. That office disallowed some of the claims and failed to act upon the remainder. Thereupon petitioners brought suit in the United States Court of Claims against the United States for the difference between the charges which they made and collected from the Government and the higher charges prescribed by the Nebraska Tariff.

The Government filed a motion for summary judgment on the asserted ground that the Supreme Court of the United States, on March 3, 1958, held in the California case that a state could not constitutionally regulate rates charged by motor carriers in intrastate commerce for transportation for the Government. The United States Court of Claims granted the Government's motion for summary judgment and dismissed the petition of petitioners.

In view of the Nebraska State Railway Commission orders involved in the litigation its counsel was consulted with in the preparation of this petition.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Your petitioners respectfully submit that this court's decision in the California case has not completely settled the issue of whether state regulatory commissions may regulate the rates charged by carriers transporting goods for the Federal Government in intrastate commerce or whether the California case is to be interpreted as not being a "challenge * * * to a rate 'order' but to a statute which requires the United States to submit its negotiated rates to the * * * Commission for approval." Until this question is more definitely settled a multitude of litigation from all of the states probably will continue to arise not only in the manner of petitioners' case but in many other forms. In writing the opinion for the United States Court of Claims, Judge Madden stated that the Court thought the petitioners' argument a legitimate one in view of some of the language in the California case, but decided, in reading the opinion in the California case as a whole, that Nebraska's attempt to impose its prescribed rates was invalid.

If the California case stands for the broad proposition understood by the Court of Claims, a question arises as to the status of a carrier who transports goods in intrastate commerce for the Federal Government without any permit or certificate from the State Commission to engage in transportation as a common carrier.

Until the meaning of the California case is unequivocally stated many facets of state regulation of carriers will be shrouded in mystery and wasteful litigation will continue

in an effort to clarify the issues.

Your petitioners respectfully submit that in view of the widespread interest and importance of the basic issue in the case and due to the petitioners' belief that the United States Court of Claims decided a federal question of substance in a way not in accord with the applicable decisions of this Court, that certiorari should therefore be granted for the following reasons:

1. The California decision does not govern the instant case because under the Nebraska law there is lacking the inconvenient procedure caused by state administrative discretion to which the United States was obliged to bow under the California law.

The California case is not adequate case authority to support a motion for summary judgment in the instant case. In Nebraska applicable rates were prescribed whereas in California rates had to be negotiated and then approved subject to whatever conditions and terms the California Commission saw fit to apply within its discretion before the transportation could be performed for the government.

In the opinion of the California case it was stated:

> "*In the present case, the challenge is not to a rate 'order'* but to a statute which requires the United States to submit its negotiated rates to the California Commission for approval. The United States wants to be rid of the system that subjects its procurement services *TO THAT FORM* of state supervision." (emphasis supplied) 355 U. S. 534 at 540; 78 S. Ct. 446 at 451.

The opinion also recognized that a statutory provision

which might increase the United States' cost of doing business is not even unconstitutional. The Court stated, "We lay to one side these cases which sustain non-discriminatory state taxes on activities of contractors and others who do business for the United States, *as their impact at most is to increase the costs of operation.*" (Italics added.) 355 U. S. 534 at 543, 78 S. Ct. 446 at 452.

Therefore, it seems clear that the Supreme Court decision in the California case is not based on the reasonableness of rates prescribed by a commission nor the cost to the United States, but rather, the inconvenient procedure of negotiating rates and then having to submit such rates to the California Commission and incurring delay in shipment while awaiting the California Commission to exercise its discretion in approving or disapproving the rates and in applying or not applying additional terms or conditions to the negotiated rates.

In the instant case the objectionable features present in the California case do not exist. The Nebraska State Railway Commission has prescribed and established lawful rates for the transportation in question. Pursuant to Constitutional and statutory authorization, the State Railway Commission had prescribed rates and charges for intrastate transportation of commodities in its Official Motor Vehicle Tariff No. 3 which was in full force and effect at all times involved in plaintiffs' petition. (pet. paras. 11 and 12). In Nebraska there is no element of state administrative discretion to which the United States is obliged to bow. The law in Nebraska is merely that the carriers comply with the prescribed rates. The law does not purport to impose any further regulation or condition upon the shipment of property for the Federal Government or subject it, its officers, or agents to any regulation as

might be possible under the California Code. Under the Nebraska law the Federal Government is to be treated as any other customer. . . .

2. The Supremacy Clause of the Constitution of the United States does not render invalid Nebraska tariffs regarding solely intrastate movements insofar as the tariffs apply to motor carriers transporting property for the government solely in intrastate commerce because in Nebraska the impact of state regulation falls not on the United States but on the carrier.

During the same Term in which the California case was decided, the court recognized the difference between local laws which have a direct impact on the Federal Government and those which only affect the Federal Government to the extent of increasing its financial burden. In the case of *City of Detroit v. Murray Corp.*, 355 U. S. 489 at 493, 78 S. Ct. 458 at 461 this court said:

> "Of course the Government will eventually feel the financial burden of at least some of the tax but the one principle in this area which has heretofore been clearly settled is that the imposition of an increased financial burden on the Government does not by itself invalidate a state tax."

The case of *Penn Dairies, Inc. v. Milk Control Comm. of Pennsylvania*, 318 U. S. 261, 63 S. Ct. 617, 87 L. Ed. 748 (hereinafter referred to as "the Penn Dairies case") is clearly in point because there is no valid basis to distinguish between setting minimum prices for milk as applied to a dealer selling milk in Pennsylvania to the United States for consumption at military camps and setting rates which carriers must charge for transporting goods even though the consignor happens to be the Government who might

even be contracting for the transportation in intrastate commerce of milk or some other commodity which has also been subject to price or rate regulation.

This Honorable Court stated in the Penn Dairies case:

> "* * * By the exercise of control over the seller, the regulation imposes or may impose an increased economic burden on the government, for it may be assumed that the regulation if enforcible and enforced will increase the price of milk purchased for consumption in Pennsylvania, unless the government is able to procure a supply from without the state, * * *. But in this burden, if Congress has not acted to forbid it, we can find no different or greater impairment of federal authority than in the tax on sales to a government contractor sustained in *Alabama v. King & Boozer, supra*; or the state regulation of the operations of a trucking company in performing its contract with the government to transport workers employed on a Public Works Administration project, upheld in *Baltimore & Annapolis R. C. v. Lichtenberg, supra*; or the local building regulations applied to a contractor engaged in constructing a postoffice building for the government, sustained in *Stewart & Co. v. Sadrakula*, 309 U. S. 94."

3. No Congressional Legislation deprives the States of authority to regulate intrastate motor carrier rates for service to the United States.

Repeal of statutes by implication is not favored by this Honorable Court nor should State rights or powers be denied by implication from Congressional legislation.

This Honorable Court in the Penn Dairies case (supra) considered and rejected the argument of the United States that various Federal statutes of the time, relating to government purchasing and competitive bidding on govern-

ment contracts, showed that Congress intended to supersede the normal price or rate regulatory functions of the States in connection with government contracts with private persons for goods or services. There has been no material change in Federal legislation in this respect since the decision in the Penn Dairies case (supra).

The provisions of the Armed Services Procurement Act referred to in the California case are not materially different from the similar statutory provisions considered by this Court in the Penn Dairies case (318 U. S. at pp. 271-273). As stated there such statutes "do not purport to set aside local price regulations or prohibit the States from taking punitive measures for violations of such regulations." "They are wholly consistent with the continued existence of such price regulations and with acceptance by government officers of the regulated price where that is the lowest bid, or the omission of competitive bidding in circumstances where the local price regulations render it 'impracticable to secure competition'" (318 U. S. at pp. 272-273).

However, in the California case, this Court recognized the fact that where competitive bidding is impracticable because the purchase or contract is for property or services for which there is little or no competition that the Armed Services Procurement Act expressly gives the head of an agency an opportunity to "negotiate". This Honorable Court apparently overlooked the fact, however, that in negotiating a contract there may be terms and conditions subject to negotiation other than price. Such terms may not have any bearing on the state regulated price. Nowhere does the Procurement Act provide that where prices are set by state law or regulation that the head of the agency should ignore the prescribed prices in nego-

tiating a purchase or contract. There is nothing to lead one to doubt but that the head of the agency should negotiate the purchase or contract subject to the prescribed rate or price.

On the other hand the provisions of the Federal Property and Administrative Services Act of 1949 as amended (40 U. S. C. 471, 481 (a) (4)), show on their face that Congress has recognized the authority of the State regulatory commissions over rates of carriers for transportation services to the United States. They do so by providing for representation before such State agencies by the Administrator. Neither such representation nor anything in that Act purports to supersede the authority of such State agencies in fixing rates of the carriers under their jurisdiction for services to the United States. Compare *Vinson v. Washington Gas Light Co.*, 321 U. S. 489, 497-499 (1944).

The opinion in the California case cites, in footnote 10, Section 22 of the Interstate Commerce Act as persuasive authority for implied repeal of state power. However, section 22 of the Interstate Commerce Act is neither applicable to intrastate carrier transportation nor inconsistent with such recognition of State authority. See *Alabama Public Service Commission v. Southern R. Co.*, 341 U. S. 341, 345-346 (1951). But Section 202 (b) of the Motor Carrier Act (Part II of the Interstate Commerce Act) clearly preserves "the exclusive exercise of each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof." (49 U. S. C. 302 (b)). See *Eichholz v. Public Service Commission*, 306 U. S. 268 (1939). The Interstate Commerce Commission is specifically prohibited by Section 216 (e) of that Act from regulating rates "for intrastate transportation, or for any service connected therewith, for the purpose of removing dis-

crimination against interstate commerce or any other purpose whatever" (49 U. S. C. 316 (e), *proviso*).

Since Section 22 of the Interstate Commerce Act exempts transportation for the United States from the rate provisions of that Act but fails to make such exemption in the portion of the act which refers to intrastate commerce rather than interstate commerce, the fair inference would be that no exemption was intended by Congress. Furthermore the Act expressly prohibits the Interstate Commerce Commission from interfering with intrastate rates for "any * * * purpose whatever." Interstate Commerce Act Part II; Motor Carrier Act Section 316 (e). In contrast to the express exemption of transportation for the United States from rate provisions in interstate commerce, no procurement statute declares inapplicable rate schedules covering intrastate transportation.

4. In absence of specific legislation depriving the States of authority to regulate intrastate motor carrier rates for service to the United States, the States have power to regulate rates for such service and such State power is more consistent with State and National Transportation policy than the displacement of such State power would be.

The Tenth Amendment to the Constitution of the United States preserves to the States the power of regulation of intrastate transportation services; and in the absence of appropriate specific Federal legislation there is no inherent conflict between such State rate regulation of intrastate services to the United States and the Constitutional powers and duties of the United States.

In the Penn Dairies case (supra) this Honorable Court considered and rejected the arguments of the United States,

that State regulation of prices or rates for property or services to the United States violates any Constitutional immunity of the United States or conflicts with Federal procurement legislation.

The relation between the United States, as a shipper, and a carrier ordinarily is the same as the relationship between private shippers and a carrier. Contracts between shippers and carrier cannot prevent the exercise of State regulatory authority. *Producers Transportation Co. v. Railroad Commission*, 251 U. S. 228, 232 (1920); *Atchison, Topeka & Santa Fe Ry. v. United States*, 256 U. S. 205 (1920); *Louisville and Nashville Railroad Company v. Central Iron and Coal Company*, 265 U. S. 59 (1923); and *St. Louis, B. & M. R. Co. v. United States*, 268 U. S. 169, 173 (1925).

The effect of the decision in the United States Court of Claims is to sanction rate-cutting practices where the United States is the shipper. Rate-cutting practices might lead to a deterioration of the economic position of the carrier industry as a whole in Nebraska. Such practices create unfair competition and seriously impair the carrier revenues. Obviously rate provisions are necessary incidents of the regulatory scheme and the declared policy of the Nebraska legislature to foster sound economic conditions; to promote safe, adequate, economical, and efficient service, and just and reasonable rates, without unjust discrimination, and unfair destructive practices in the transportation field (Sec. 75-222, Neb. Rev. Stat. (Reissue 1958)). Without jurisdiction over rates, the Nebraska Railway Commission will be seriously jeopardized in providing for adequate, efficient, safe, and reasonable transportation by common carriers in Nebraska. The next logical step would then be for the Government to negotiate with carriers which had not been licensed in Nebraska or which had not

met all the requirements with respect to safety, insurance, and other matters.

Congress expressly recognized the need of State regulation of motor carriers engaged in intrastate commerce by its provision in the Interstate Commerce Act (discussed supra).

Summary.

Your petitioners believe that the United States Court of Claims has erred in dismissing your petitioners' petition on the sole basis of this Honorable Court's decision in the California case, without considering the distinctions which are above discussed.

Moreover, the decision of the United States Court of Claims in the instant case leaves unsettled a host of questions as to the scope of its decision. Only a restatement by this Honorable Court of the principles and rules applicable to these issues can prevent a multitude of law suits from every state in the union seeking to determine what regulatory powers they can exercise in their own states.

In sum, your petitioner believes that the Nebraska intrastate motor carrier tariff is not invalid because (1) it does not provide any inconvenient procedure caused by state administrative discretion, (2) the impact of the regulation is on the carrier rather than on the United States, (3) no Congressional legislation deprives the States of authority to regulate intra-state motor carrier rates for service to the United States and in absence of such specific legislation, the States have power to regulate such rates, and (4) it conforms with the regulatory schemes of both the national government and the State of Nebraska.

CONCLUSION

The decision of the United States Court of Claims is erroneous and injects uncertainty into the regulatory jurisdiction of state government over intrastate commerce. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

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APPENDIX A

In the United States Court of Claims

No. 527-56

(Decided December 3, 1958)

UNION TRANSFER COMPANY, DBA UNION FREIGHTWAYS, ET. AL., v. THE UNITED STATES

Mr. James E. Ryan for the plaintiffs. *Mr. Jack Deroe* was on the brief.

Mr. Lawrence S. Smith, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for the plaintiff.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

MADDEN, *Judge*, delivered the opinion of the court:

This is a suit to recover from the Government additional amounts to which the plaintiffs claim they are entitled for transporting explosives for the Government by truck.

Four of the plaintiffs are Nebraska corporations. The fifth, John E. Neylon, is an individual doing business under a trade name. All are in the trucking business, and hold certificates of public convenience and necessity issued by the Nebraska State Railway Commission authorizing them to transport freight over the highways of Nebraska as common carriers solely within the State.

The plaintiffs transported for the Government numerous

shipments of explosives of various types, the transportation being entirely within the State. The shipments were on Government bills of lading, the form of which was prescribed by the Comptroller General of the United States. The plaintiffs had filed with the Government agencies for which they carried explosives, but had not filed with the Nebraska State Railway Commission, quotations of rates at which they would transport the explosives.

The Nebraska Commission had, in its Official Motor Vehicle Tariff No. 3, issued May 22, 1945, and effective August 15, 1945, prescribed classification ratings, class and commodity rates and rules and regulations to be used in determining charges to be made for trucking freight in Nebraska. Tariff No. 3 provided that the rates prescribed in it were the only lawful rates that could be charged. On February 1, 1955, The Nebraska Commission ordered the plaintiffs and other carriers transporting explosives for the Federal Government to proceed immediately to collect any and all existing undercharges which had occurred subsequent to January 1, 1942, in connection with such transportation.

The amounts which the plaintiffs had charged the Government were much smaller than the amounts which were prescribed by the Nebraska Commission's Tariff No. 3. The plaintiffs filed claims with the General Accounting Office for the differences. That office disallowed some of the claims and has not acted upon the rest of them.

The plaintiffs assert in this suit that the charges which they made to and collected from the Government were unlawful because they were lower than those prescribed by the laws of Nebraska and the tariffs and regulations of the State Railway Commission of Nebraska. Their suit is for the difference between the two figures.

The Government has filed a motion for summary judgment, on the asserted ground that the Supreme Court of the United States, on March 3, 1958, in the Case of *Public Utilities Commission of California v. United States*, 355 U. S. 534, held that a state could not constitutionally regulate rates to be charged to the United States for transportation such as that here involved.

The plaintiffs urged that the *California* decision is distinguishable. They point out that the California statute which was held to be unconstitutional authorized the California Commission to permit carriers to transport property for the United States at reduced rates, "to such extent and subject to such conditions as (the Commission) may consider just and reasonable." That meant that a reduced rate which was agreeable to the United States and the carrier would have to be submitted to and approved by the Commission before it would be lawful. They point out that there was no such unwieldly procedure in Nebraska; that Nebraska prescribed uniform rates for all shippers, including the United States, and hence did not invite or require or permit the United States to seek the approval of the Commission for reduced rates.

The plaintiffs argue that all that the Nebraska laws and tariffs did was to make the cost of shipments by the United States greater than it would have been if the carriers, willing to carry for less, had been allowed to do so. The plaintiffs quote certain language from the Supreme Court's opinion, which, they urge, shows that the objectionable feature of the California statute was not the increase in costs which it caused, but the inconvenient procedure prescribed by it. We think the plaintiffs' argument is a legitimate one, in view of some of the langugage in the Supreme Court's opinion, but, reading the opinion as a whole, we

think the *California* decision governs the instant case, and that Nebraska's attempt to impose its prescribed rates upon the United States is invalid, because it is in violation of the Supremacy Clause of the Constitution of the United States.

The defendant's motion for summary judgment is granted, and the plaintiffs' petition is dismissed.

It is so ordered.

LARAMORE, *Judge*; WHITAKER, *Judge*; and JONES, *Chief Judge*, concur.

APPENDIX B

STATUTES INVOLVED

75-201. State Railway Commission; regulatory powers; scope. The State Railway Commission shall have the power to regulate the rates and services of, and to exercise a general control over, all railroads, express companies, car companies, sleeping car companies, freight and freight-line companies, telephone and telegraph companies, and any other carrier engaged in the transportation of freight, passengers, or transmission of messages for hire.

75-208. Common carriers; rates; regulations; enforcement. The State Railway Commission shall have the power, and it shall be its duty, to make all necessary classifications, and to fix all necessary rates, charges and regulations to govern and regulate the freight and passenger tariffs of railway companies and common carriers, the power to correct abuses and prevent unjust discriminations, extortions and overcharges in rates of freight and passenger tariffs on the different railroads in this state, and to enforce the same by having the penalties inflicted as provided in sections 75-310 and 75-311, through proper courts having jurisdiction.

75-209. Common carriers; freight rates; classification. The State Railway Commission shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and property of whatsoever character and description that may be transported over the railways of this state into such general and special classes as may be found necessary and expedient, and fix to each

class or subdivision of freight a reasonable rate, for each railway company or common carrier, for the transportation of each of such classes and subdivisions. The classifications herein provided for shall apply to and be the same for all railway companies or common carriers within its jurisdiction.

75-222. Motor carriers; regulation; legislative policy. It is hereby declared to be the policy of the Legislature to (1) regulate transportation by motor carriers in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers, in the public interest; (2) promote adequate, economical, and efficient service by motor carriers; and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices; (3) improve the relations between, and coordinate transportation by, and regulation of, motor carriers and other carriers; (4) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska; (5) cooperate with the several states and the duly authorized officials thereof; and (6) cooperate with the Interstate Commerce Commission in the administration and enforcement of the federal "Motor Carrier Act, 1935," approved by the President on August 9, 1935. The Legislature declares that all of the available carriage service, including common carriage by rail and road, and contract carriage by road, are so interdependent that the public may not continue to have a safe and dependable transportation system unless contract carriers operating on the same roads with common carriers are brought under just and reasonable regulations bringing their service into relation with common carriers.

75-241. Motor common carriers; rates; commission shall prescribe; when effective. The State Railway Commission is vested with power and authority to and it shall be its duty to make investigations, hold hearings, and prescribe reasonable rates and charges for the transportation of passengers and property by common carrier, which rates and charges shall become effective at such time as is specified by the commission.

75-242. Motor common carriers; rebates prohibited. No common carrier subject to the provisions of sections 75-222 to 75-250 shall charge, demand, collect or receive a greater, less or different compensation for transportation, or for any service in connection therewith between the points enumerated in such tariff than the rates, charges and fares specified in the tariff in effect at that time. No such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent, broker or otherwise, any portion of the rates, fares or charges so specified, or to extend to any person any privileges or facilities for transportation in intrastate commerce except such as are specified in its tariffs.

75-245. Contract motor carriers; rates; commission shall fix. The State Railway Commission is vested with power and authority, and it is hereby made its duty, to prescribe minimum rates, fares and charges for contract carriers. The minimum rates, fares and charges prescribed shall become effective simultaneously with the rates prescribed by the commission for common carriers.

75-246. Contract motor carriers; rates; reduction; when permitted. No reduction shall be made in any such charge, either directly or by means of any change in any rule, regulation or practice affecting such charge or the value

of service thereunder, except after thirty days' notice of the proposed change filed in the aforesaid form and manner. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge or collect a less compensation for such transportation than the charges filed in accordance with section 75-247 as affected by any rule, regulation or practice so filed, or as may be prescribed by the State Railway Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special service, facilities or privileges, or by any other device whatsoever, to charge, accept or receive less than the minimum charges so filed or prescribed.

APPENDIX C

BEFORE THE NEBRASKA STATE RAILWAY COMMISSION

In the matter of the collection of undercharges on the transportation of explosives.

(Order entered February 1, 1955)

BY THE COMMISSION:

Pursuant to authority, duty and powers, vested in Nebraska State Railway Commission by the Constitution of the State of Nebraska and Laws duly enacted by the Nebraska State Legislature, and also classification, rates and tariffs issued under said authority, duty and powers by said Commission, including Resolution 146 and supplements thereto, IT IS ORDERED:

ORDER

All carriers operating under the jurisdiction of the Nebraska State Railway Commission transporting explosives for and on behalf of the Federal Government, its various departments, agencies and subdivisions by whatsoever facilities employed, be and the same are hereby directed and ordered to immediately proceed to collect any and all existing undercharges caused by the application of classification or tariff provisions contrary to classification and tariff provisions prescribed by said Commission. This order relates to any and all shipments moving on and subsequent to January 1, 1942, between Federal Installations located at or near Mead, Grand Island, Hastings and Sidney, Nebraska.

IT IS FURTHER ORDERED that a copy of this order be served by first-class mail upon all carriers of general commodities coming under the jurisdiction of the Nebraska State Railway Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of February, 1955.

NEBRASKA STATE RAILWAY COMMISSION

(Signed) JOSEPH J. BROWN
Chairman

(SEAL)

ATTEST:

(Signed) Jessie A. Burgin
Acting Secretary

COMMISSIONERS CONCURRING:

(Signed) JOSEPH J. BROWN

(Signed) PAUL E. PETTYGROVE

(Signed) RICHARD H. LARSON

HCK:bam